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Wong Sun and the Poisoned Dart-Suppression of evidence seized pursuant to warrantless searches

Periodically the U.S. Supreme Court and the Fourth Circuit Court of appeals find it necessary to remind us of prior opinions and to emphasize the continuing validity of those cases. This has been especially true in the area of search and seizure. Since the cases of Wong Sun v. United States 371 U.S. 471 (1963) and Mapp v. Ohio 367 U.S. 643 (1961) law enforcement has been made ever mindful of the doctrine known as "Fruit of the Poisonous Tree" which, essentially, requires application of the Exclusionary Rule to evidence which has resulted from an invalid search. Lest there be any doubt as to when the doctrine has application the courts have taken great pains to outline vividly when searches may run afoul of the principles set out in their prior decisions.

In keeping with this trend the Fourth Circuit Court of Appeals recently rendered its opinion in the case of U.S. v. Dart (36 CrL 2151, November 1, 1984), closely followed by the per curiam opinion of the U.S. Supreme Court in Thompson v. Louisiana (36 CrL 4104, November 26, 1984). While significantly different in their underlying facts, the cases are strongly similar in the legal issue which they present: the permissibility of a warrantless search of a crime scene after the U.S. Supreme Court decision in Mincey v. Arizona 437 U.S. 385 (1978).

To refresh the memory, Mincey involved the warrantless search of a residence where a Murder had occurred. Officers of the Tucson Metropolitan Area Police searched the residence/crime scene for a total of four days seizing 200 to 300 objects. The State of Arizona attempted to justify the warrantless search on the basis of a so-called "crime scene exception" to the warrant requirement of the Fourth Amendment. The U.S. Supreme Court rejected the search and held clearly that "...when the police come upon the scene of a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises.... And the police may seize any

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evidence that is in plain view during the course of their legitimate emergency activities..." (Mincey, supra.), but the court concluded its treatment of the search in Mincey by noting that a warrantless search must be strictly limited by the exigent circumstances which justify it. The mere fact that a serious crime has occurred does not of itself create an exception to the warrant requirement. And, in this fashion, the Supreme Court of the United States announced that there is no "crime scene exception" to the warrant requirement by which a warrantless search may be made based solely on the "exigency" of a serious crime having occurred. The court noted briefly that the type exigency which would justify a warrantless search would be in the nature of a life-endangering situation which would require an officer's search to insure safety or to insure that injured persons or bodies were found.

In Dart a police officer, called upon to investigate several break-ins at a self-service storage facility, entered a storage unit leased by the defendant, which had been broken into, in order to determine whether any intruder was still on the premises and to establish whether theft had occurred. While in the defendant's storage unit the officer attempted, with the aid of a fingerprint kit, to lift prints from an automobile which was stored there. At the same time the officer noticed what appeared to be an antique handgun lying on top of a blanket-covered pile. While looking at the handgun he saw two leather pouches lying on the floor. He opened the pouches and found two loaded handguns in them. After this find, the officer lifted the blanket on which the first handgun had been found and saw a stack of numerous rifle butts. He contacted other officers who had arrived and showed them what he had discovered. Those officers proceeded to go through the stack, totalling some 300 weapons, and found numerous fully automatic weapons and illegal "M-1 conversion kits". At no point, until this discovery, had a search warrant been sought. The officers finally obtained and executed a warrant and one additional unlawful weapon was found. Dart was prosecuted for the possession of unregistered automatic weapons and pleaded "Guilty" reserving his right to appeal.

In Thompson deputies from the Jefferson Parish Sheriff's Department arrived at the defendant Thompson's residence in response to a report of a homicide by the defendant's daughter. On arrival, the deputies discovered the defendant's husband dead of a gunshot wound to the head and the defendant lying unconscious due to an apparent drug overdosage in a separate room. According to the defendant's daughter, the defendant shot her husband and then ingested a large quantity of pills in an apparent suicide attempt before changing her mind and calling the daughter for assistance. The deputies transported the unconscious defendant to a hospital for assistance and secured the crime scene. Thirty five minutes after the defendant had been transported from the scene a homicide team from the Sheriff's Office arrived and conducted a "general exploratory search for evidence of a crime". The search produced three items of evidence which were sought to be used against the defendant: a pistol, a torn-up letter and an apparent suicide note. It is important to note that at the time this "exploratory search" was conducted the deputies who had responded initially had already secured the scene by seeking other suspects or victims. As well, no warrant had been obtained for the "exploratory search."

In both Dart and Thompson the principle of law layed down in Mincey v. Arizona becomes the pivot on which the cases are decided. In both cases the higher Courts held the searches to be invalid and the seized evidence was excluded as "Fruit of the Poisonous Tree".

The Dart court noting that no exigency justified either the warrantless search of the leather pouches or the blanket-covered rifles and that the "Plain View" doctrine would likewise not justify the searches, criticizes the searching officers for their

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"...callous disregard for constitutional principle." And the "...shoddiness of the police practices..." which were displayed.

The Thompson court in an only slightly more charitable voice cautions that Mincey v. Arizona is directly on point and that the court has

> "... consistently reaffirmed [its] understanding that in all cases outside the exceptions to the warrant requirement the Fourth Amendment requires the interposition of a neutral and detached magistrate between the police and the 'persons, houses, papers and effect' of the citizen" (Thompson at 4104).

In short then the Fourth Circuit Court of Appeals and the U.S. Supreme Court remind us that there is no "crime scene exception" to the Fourth Amendment warrant requirement. In responding to the scene of a crime an officer may (1) take reasonable steps to secure the premises and thus bring under control the exigency which required his or her presence (2) seize, under the "Plain View" doctrine obvious evidence or contraband which he or she may see in securing the premises and (3) use those things seized or viewed "in plain view" to apply for a warrant. No officer, however, may conduct a "general exploratory search" of a crime scene. Likewise, as always, even a warrant-supported search is subject to "reasonableness" requirements in its execution.

In closing, if we want evidence which will be admissible in proving our cases, searches for the evidence must meet Fourth Amendment requirements. In case of doubt, seek a warrant.

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